

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DUANE MCCOY,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent,

No. 4:20-CV-849 RWS

MEMORANDUM AND ORDER

Before the Court is movant's motion seeking relief under the Supreme Court's case in *Rehaif v. United States*, 139 U.S. 2191 (2019), which the Court has construed as a motion to vacate, set aside and correct sentence brought pursuant to 28 U.S.C. § 2255. For the reasons outlined below, movant will be provided time to amend his motion to vacate.

Background

On May 2, 2013, movant pled guilty to being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g) and 18 U.S.C. § 924(e)(1). *See United States v. McCoy*, No. 4:12CR416 RWS (E.D. Mo.). In McCoy's Presentence Investigation Report (PSR), the United States Probation Office indicated McCoy had three prior convictions for violent felonies that made him subject to an enhanced sentence under the ACCA, assault on a law enforcement officer – first degree, Mo. Rev. Stat. § 565.081, and violence to an employee of the Department of Corrections by an inmate, Mo. Rev. Stat. § 217.385.1. Movant was sentenced to one-hundred and eighty months' imprisonment (180) to run concurrently with the sentence imposed in the Circuit Court of St. Louis, Missouri, Case No. 0822-CR05284-01. Plaintiff did not file an appeal of his conviction or sentence.

On June 23, 2016, movant filed his first motion to vacate, set aside or correct sentence brought pursuant to 28 U.S.C. § 2255. *McCoy v. United States*, No. 4:16-CV-951 RWS (E.D.Mo). The Court denied movant's motion to vacate on March 13, 2017. *Id.*

On May 15, 2020, movant filed the instant motion to vacate in his criminal action, seeking relief under the new Supreme Court case *Rehaif v. United States*, 139 S.Ct. 2191 (2019). The Court interpreted the instant motion as a new motion to vacate brought pursuant to 28 U.S.C. § 2255. However, because the document is not brought on a court form proper for filing motions to vacate, the Court will require movant to amend his motion to properly set forth his grounds for relief.

Discussion

Movant's motion to vacate has not been drafted in a manner that complies with the Federal Rules. As a result, the Court will direct petitioner to submit an amended motion to vacate on a court form.

Movant will be required to file an amended motion to vacate, on a court-form, containing all of the allegations he wishes to bring against the government. Simply put, all claims in this action must be included in one, centralized motion. Movant's claims must be stated in a succinct manner and any accompanying arguments should be accompanied by specific grounds for relief.

The Federal Rules require clarity in pleadings, including pleadings from pro se parties. Rule 2(c) of the Rules Governing Habeas Corpus Cases requires that a habeas petition "(1) specify all the grounds for relief available to the petitioner; (2) state the facts supporting each ground; (3) state the relief requested; [and] (4) be printed, typewritten, or legibly handwritten..." Rule 2(d) requires that the petition be drafted on the standard form or to substantially follow the form.

Rule 8(a) of the Federal Rules of Civil Procedure requires pleadings in the federal courts to contain a short and plain statement of the claim showing that the pleader is entitled to relief . . . Rule 8 is applicable to habeas actions pursuant to Rule 12 of the Rules Governing § 2254 Cases.

Movant is warned that the filing of the amended motion to vacate **completely replaces** the original and any supplemental motions or memoranda and claims that are not re-alleged are deemed abandoned. Movant's failure to file an amended motion to vacate within the thirty (30) day time period will result in a dismissal of this action, without prejudice.

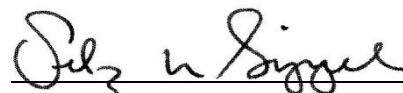
Accordingly,

IT IS HEREBY ORDERED that the Clerk shall mail to movant a form for filing a motion to vacate pursuant to 28 U.S.C. § 2255.

IT IS FURTHER ORDERED that movant shall utilize the form and submit an amended motion to vacate that complies with this Memorandum and Order within thirty (30) days of the date of this Memorandum and Order.

IT IS FURTHER ORDERED that movant's failure to amend his motion to vacate in accordance with the instructions set forth in this Memorandum and Order will result in a dismissal of this action without prejudice.

Dated this 17th day of August, 2020.

A handwritten signature in black ink, appearing to read "Rodney W. Sippe", is written over a horizontal line.

RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE